be drawn. In any case there is a finding of fact by the trial Judge affirmed by the Court of Appeal that the primary object of the business is not moneylending and consequently the submission loses most if not all its relevance.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitors: *Slaughter & May; E. F. Turner & Sons.*

MATTHEW LIM v. GAME WARDEN, PAHANG

[A. Cr. J. (Adams J.) September 18, 1959]

[Raub — Criminal Appeal No. 8 of 1959]

Criminal Procedure — Statement to the police in the course of investigation — Use of prohibited — Exception — Criminal Procedure Code (Cap. 6), ss. 113 and 173(f).

Trial — Speedy trial — Observations on.

The effect of section 113 of the Criminal Procedure Code is to prohibit absolutely the use of any statement made by a person to a police officer during the course of police investigation as evidence in Court with one exception and one exception only. This exception allows the use of a statement made by a person to a police officer during the course of police investigation for the purpose of impeaching the credit of a witness in the manner provided by the Evidence Ordinance. The procedure is quite clearly laid down in the section and may be summarised as follows:

(a) the accused or the prosecutor must request the Court to refer to any statement made by such witness to a police officer in the course of police investigation;

(b) the Court may then if it is expedient in the interest of justice direct the accused to be furnished with a copy thereof;

(c) the statement may then be used to impeach the credit of such witness;

(d) such statement must be properly proved.

The record must show that these provisions have been complied with and terms such as "treating the witness as hostile" should be avoided. Once this has been done and it is proved that the previous statement when compared with the evidence given in Court contains material inconsistencies the witness's credit is impeached and his evidence becomes worthless because the witness himself has been shown to be unworthy of credit.

Cases referred to:—

(1) *Muthusamy* v. *Public Prosecutor* [1948] M.L.J. 57.

(2) *Jusoh bin Awang* v. *Public Prosecutor* [1950] M.L.J. 69.

MAGISTRATE'S CRIMINAL APPEAL.

Appellant in person.

J. P. Kirby (Sr. Federal Counsel) for the respondent.

Adams J.: The brief facts leading up to this appeal were that the defendant/Appellant, Matthew Lim, and one Chin Fong Ching, who has not appealed, were charged under section 26 of the Wild Animals and Birds Protection Ordinance, 1955 for shooting a Rusa without a licence and also for shooting a Rusa during the closed season contrary to section 21 of the Ordinance. The date of the alleged offence was 22nd July, 1957. A summons was duly applied for and was issued on the 6th May, 1958 and the case came up for hearing before the learned Magistrate at Temerloh on the 24th of July, 1958. It will be noted that this is a year after the commission of the alleged offence.

The evidence consisted of the crew of the Magna Vox vehicle operating in the Triang area, but it is only the 1st, 2nd and 3rd prosecution witness who might have been able to provide the evidence to prove the charge against the two accused. However, quite understandably, when the case came on for trial these three witnesses were unable to remember anything about the event which had taken place a year before.

The record shows in the case of the three witnesses that the Prosecution sought to remedy this defect memory by seeking to impeach the credit of the witness under section 113 of the Criminal Procedure Code. In the case of the 1st and 3rd prosecution witness this had no effect at all and neither was able to remember anything. In the case of the 2nd prosecution witness, however, the witness did then purport to remember the events that took place on the 22nd July, 1957 after the statement had been put to him and on that evidence the learned Magistrate convicted the defendants, in spite of the fact that there were material differences between his evidence before his previous statement was put to him and his subsequent evidence.

The effect of section 113 of the Criminal Procedure Code has been fully discussed by Taylor J. in *Muthusamy* v. *Public Prosecutor*[1] which was followed by Briggs J. in *Jusoh bin Awang* v. *Public Prosecutor*[2]. All Magistrates should be familiar with this case and are advised to read it before using section 113(ii) of the Criminal Procedure Code. Briefly the effect of section 113 of the Criminal Procedure Code is to prohibit absolutely the use of any statement made by a person to a Police Officer during the course of Police investigation as the evidence in Court with one exception and one exception only. This exception allows the use of a statement made by a person to a Police Officer during the course of Police investigation for the purpose of impeaching the credit of a witness in the manner provided by the Evidence Ordinance. The procedure is quite clearly laid down in the section namely:—

(a) the accused or the prosecutor must request the Court to refer to any statement made by such witness to a Police Officer in the course of Police investigation;

(b) the Court may then if it is expedient in the interest of justice direct the accused to be furnished with a copy thereof;

(c) the statement may then be used to impeach the credit of such witness;

(d) such statement must be properly proved.

The record must show that these provisions have been complied with and terms such as "treating the witness as hostile" should be avoided. Once

this has been done and it is proved that the previous statement when compared with the evidence given in Court contains material inconsistencies the witness's credit is impeached and his evidence becomes worthless because the witness himself has been shown to be unworthy of credit. The previous statement cannot be used to prove the offence against the accused as was apparently done in this case because of the clear prohibition against the admission of such statement in evidence contained in section 113(i).

Without the evidence of the 2nd prosecution witness whose credit was impeached there is no evidence at all against the defendant/appellant or 2nd defendant who has not appealed and neither of the defendants, by virtue of section 173(f) of the Criminal Procedure Code, should have been called upon to make their defence.

The appeal therefore must be allowed and the fine if paid returned to the defendant.

In so far as the 2nd defendant, Chin Fong Ching, is concerned, I propose to act by way of revision under section 325 of the Criminal Procedure Code and I quash the conviction and sentence against him. I understand he has paid his fine and this must be repaid to him.

I think I should draw the attention of the proper authorities to the legal maxim interest *reipublicae ut sit finis litium.* It is essential to the efficient administration of justice that cases be brought by the prosecution promptly and disposed of as quickly as possible by the Court. In this case there was a nine months' delay before the summons was issued. The case was heard within a month of the issue of the summons. The good administration of justice requires the guilty to be punished and the innocent acquitted. It is fair neither to the prosecution nor the defence to delay the prosecution of a case as was done here. The prosecution witnesses had clearly forgotten what had happened. The defendants in this case had no witnesses but had they had the defence would have been at a similar disadvantage, and might even have found its witnesses dispersed and untraceable.

Appeal allowed.

PUBLIC PROSECUTOR v. HUSSIN

[R. Cr. J. (Adams J.) September 21, 1959]

[Raub — Miscellaneous Criminal Application No. 3 of 1959]

Road Traffic — Period of mandatory disqualification — Forfeiture of licence.

In this case the accused had pleaded guilty to riding a motor-cycle on the public road without there being in force in respect of the said vehicle a policy in respect of 3rd party risk which was an offence contrary to the Motor Vehicles (Third Party Risk) Regulations, reg. 3. He was fined $40 and disqualified from driving for 6 months.

Held: (1) the mandatory disqualification for a minimum period of 12 months under the Regulations cannot be shortened unless there were special reasons arising out of the case itself for so doing;

(2) when a period of disqualification is imposed the licence of the defendant must be taken from him and sent to the Registrar and Inspector of Motor Vehicles together with the report of the case; the licence must on no account be left in the possession of the defendant who can then drive in spite of disqualification with very little chance of his being discovered.

CRIMINAL REVISION.

Adams J.: This matter came to my notice as a result of the Monthly Returns and from the record I discovered that the Magistrate has failed to impose the mandatory period of 12 months' disqualification from driving motor vehicle.

The accused in this case had pleaded guilty to riding a motor-cycle on the public road without there being in force in respect of the said motor-cycle a policy in respect of Third Party Risk which was an offence contrary to The Motor Vehicles (Third Party Risk) Regulations, Regulation 3.

The Magistrate imposed a fine of $40 and disqualified the defendant for driving for 6 months.

It is a well settled law that the Regulations impose a mandatory disqualification for a minimum period of 12 months and this cannot be shortened unless the Magistrate finds special reasons arising out of the case itself for so doing.

There were no special reasons arising out of the case and therefore acting by way of revision I varied the sentence and imposed disqualification of 12 months from the date of conviction.

Magistrates must remember that this is an extremely serious offence in that if an innocent road user is knocked down and injured or killed, his dependents have no certain means of recovering from the uninsured driver any loss or damage that they may have sustained.

Magistrates must also ensure that when a period of disqualification is imposed the licence of the defendant is taken from him and sent to the Registrar and Inspector of Motor Vehicles together with the report of the case. It must on no account be left in the possession of the defendant who can then drive in spite of disqualification with very little chance of his being discovered.

Sentence varied. Disqualification period enhanced.